

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nina Mickens	Team: Team # 2	CCRB Case #: 200905895	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/15/2009 7:00 PM	Location of Incident: opposite § 87(2)(b)	18 Mo. SOL 10/15/2010	Precinct: 34		
Date/Time CV Reported Fri, 04/17/2009 1:50 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 04/17/2009 1:50 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. LT Frankie Rivera	00000	907150	034 PCT
2. POM Fabio Nunez	01432	925839	034 PCT
3. POM Christop Labate	12289	935145	034 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Elvin Pichardo	04287	937288	034 PCT
2. POM Andrew Roe	27905	931080	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A . LT Frankie Rivera	Discourtesy: Lt. Frankie Rivera spoke obscenely and/or rudely to § 87(2)(b).	A . § 87(2)(g)
B . LT Frankie Rivera	Abuse of Authority: Lt. Frankie Rivera searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	B . § 87(2)(g)
C . POM Christop Labate	Abuse of Authority: PO Christopher Labate searched § 87(2)(b).	C . § 87(2)(g)
D . POM Christop Labate	Discourtesy: PO Christopher Labate spoke obscenely and/or rudely to § 87(2)(b).	D . § 87(2)(g)
E . POM Fabio Nunez	Abuse of Authority: PO Fabio Nunez damaged § 87(2)(b).	E . § 87(2)(g)
§ 87(4-b) § 87(2)(g)	§ 87(2)(b)	
G . LT Frankie Rivera	Other: Lt. Frankie Rivera supplied false information which formed the basis of the arrest paperwork for § 87(2)(b).	G . § 87(2)(g)

Case Summary

§ 87(2)(b) filed a complaint with the CCRB via telephone on April 17, 2009.

On April 15, 2009, at about 7:00 p.m., Lt. Frankie Rivera, PO Christopher Labate and PO Andrew Roe interacted with § 87(2)(b) and § 87(2)(b) because their car was double-parked across the street from § 87(2)(b) in Manhattan. The following allegations resulted:

- **Allegation A - Discourtesy:** Lt. Frankie Rivera spoke obscenely and/or rudely to § 87(2)(b) § 87(2)(g)
- **Allegation B - Abuse of Authority:** Lt. Frankie Rivera searched the car in which § 87(2)(b) and § 87(2)(b) were occupants. § 87(2)(g)
- **Allegation C - Abuse of Authority:** PO Christopher Labate searched § 87(2)(b) § 87(2)(g)
- **Allegation D - Discourtesy:** PO Christopher Labate spoke obscenely and/or rudely to § 87(2)(b) § 87(2)(g)
- **Allegation E - Abuse of Authority:** PO Fabio Nunez damaged § 87(2)(b)'s property. § 87(2)(g)
- § 87(4-b) § 87(2)(g)
- **Allegation G – Other Misconduct:** Lt. Frankie Rivera supplied false information for the arrest paperwork of § 87(2)(b) § 87(2)(g)

Results of Investigation

Civilian Statement(s)

Complainant: § 87(2)(b)

- § 87(2)(b) -old black male, 6'5" tall, 256 pounds, black hair and brown eyes. § 87(2)(b)

CCRB Testimony

On May 6, 2009, § 87(2)(b) was interviewed at the CCRB (Encl. 12a-f). On April 15, 2009, around 7:00 p.m., § 87(2)(b) his girlfriend, § 87(2)(b) and her § 87(2)(b)-old daughter, § 87(2)(b) were picked up at the airport after coming from Puerto Rico. § 87(2)(b)'s nephew, § 87(2)(b) drove § 87(2)(b)'s white SUV to § 87(2)(b)'s mother's home located at § 87(2)(b)

in Manhattan. § 87(2)(b) double parked across the street from § 87(2)(b) § 87(2)(b) turned on his hazard lights and stayed in the car while everyone else exited. § 87(2)(b) unloaded the luggage from his truck and carried the items upstairs to the second floor. After crossing from § 87(2)(b) to his truck, § 87(2)(b) noticed an unmarked Ford Capri parked behind him. Lt. Frankie Rivera, identified via the investigation, was in the passenger's seat of the unmarked car. § 87(2)(b) opened the passenger side rear door, pushed the seat back in place and then closed the door. Just before closing the door, the officers sped up and turned on their flashing lights. Lt. Rivera approached § 87(2)(b) on the passenger's side, told him to get out of the car and to go to the back of the car. PO Christopher Labate, who was identified via the investigation, was at the rear of § 87(2)(b)'s car. PO Andrew Roe was also present.

§ 87(2)(b) asked Lt. Rivera what was going on. Lt. Rivera and § 87(2)(b) began to curse at each other. Lt. Rivera told § 87(2)(b) to "shut the fuck up" and let the officers do what they have to do. § 87(2)(b) does not remember any of the other comments that Lt. Rivera made. § 87(2)(b) was still in driver's seat at this point. Lt. Rivera was near the front of the passenger's seat. § 87(2)(b) could not tell if he was searching the car or not. § 87(2)(b) was near the rear passenger's side of the car facing away from the car. While in the back, § 87(2)(b) said the interaction was "bullshit" or "fucked up" to PO Labate. PO Labate asked § 87(2)(b) if he thought the officers were being racist. § 87(2)(b) said no and commented that the officers were being biased because he has Virginia license plates and the officers were making assumptions because he was in Washington Heights. PO Labate told § 87(2)(b) to "shut the fuck up." PO Labate stood in front of § 87(2)(b) while PO Roe stood next to § 87(2)(b).

After being asked for identification, § 87(2)(b) handed his wallet to PO Labate who looked through it. PO Labate searched § 87(2)(b)'s shorts pockets and frisked the groin area. PO Labate removed the items from § 87(2)(b)'s pockets and then put them back. Lt. Rivera went around to the driver's side of the vehicle, told § 87(2)(b) to get out of the car and go to the back near § 87(2)(b). The officers had not asked § 87(2)(b) or § 87(2)(b) any questions at this point. PO Labate told § 87(2)(b) to "chill the fuck out". He commented that the officers were going to give § 87(2)(b) a double parking ticket but he would not stop talking. § 87(2)(b) told the officers that they were tearing up his car for no reason. PO Labate said that the officers did not want a charge for a "fucking petty bag of weed" because they were the gun unit. § 87(2)(b) could see Lt. Rivera searching the driver's side of the car. Lt. Rivera then went into the back seat of the driver's side and exited the car. Lt. Rivera showed a bag of marijuana he claimed to have found in the back seat and asked § 87(2)(b) if it was the reason why he did not want the car searched. Lt. Rivera was the only officer searching the vehicle. § 87(2)(b) and § 87(2)(b) said it was not theirs and believed the officers planted it there. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Lt. Rivera asked for § 87(2)(b) name and address and § 87(2)(b) provided it. Lt. Rivera sent PO Duchatelier and PO Peralta to the apartment building. At the same time, § 87(2)(b) probably observing the interaction from her window, had come down stairs and met the officers at the front door of the building. § 87(2)(b) stayed on the opposite side of the street and PO Duchatelier and PO Peralta returned to speak to Lt. Rivera.

Another group of plainclothes officers came to the location in an unmarked car. The driver of the car was identified via the investigation as PO Fabio Nunez. He had a metal object similar to a crowbar. He broke the back seat where § 87(2)(b)'s custom made speakers were stored and pulled the wires from the top of the car where a TV usually goes. § 87(2)(b) could hear the sound of something breaking. PO Nunez went into the back seat of the driver's side and continued to search. § 87(2)(b) is not sure if anyone other than Lt. Rivera and PO Nunez searched the car. § 87(2)(b) had no interaction with the other officers at the scene.

§ 87(2)(b) and § 87(2)(b) were arrested. PO Labate said § 87(2)(b) had pissed off the boss. The officers never explained why either male was being arrested. An officer drove away in § 87(2)(b)'s car but he is not sure who. § 87(2)(b) was transported to the 34th Precinct. It was not until after the incident that § 87(2)(b) was able to see the damage to the car. The back seat was broken and the seats can no longer go up. A piece near the neck of the steering wheel was snapped. The sensors in the car no longer work.

Victim: § 87(2)(b)

- § 87(2)(b) -old, black male, 5'9" tall, 200 pounds, black hair, brown eyes. § 87(2)(b)

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on May 18, 2009 (Encl. 16a-e). § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) did not purchase any drugs in the area on the date and did not have any marijuana in their car or on their person. § 87(2)(b) left the back of the passenger's side door ajar and went to close it. § 87(2)(b) did not see § 87(2)(b) place anything in the back seat. He only closed the door and got into the passenger's seat. Just before closing the passenger's side door, a plainclothes officer, Lt. Rivera, approached the car and said "motherfucker" get out the car and asked where the drugs were located. § 87(2)(b) got of the car and went to the back of the truck. PO Roe approached the driver's side and asked § 87(2)(b) for his license and registration. § 87(2)(b) provided the items and remained in the vehicle. PO Roe went to check out the license and registration. Lt. Rivera started searching the back of the truck while § 87(2)(b) was still in the passenger's seat. Lt. Rivera opened the back door and searched under the passenger's seat as well as the floor of the back seat. § 87(2)(b) and Lt. Rivera were cursing at each other in the back of the car. Lt. Rivera asked § 87(2)(b) what "the fuck" he was doing over there. Lt. Rivera told § 87(2)(b) to "shut the fuck up" and used the word "motherfucker" several times. After arguing for ten minutes, PO Roe returned and told § 87(2)(b) to get out of the car and stand next to § 87(2)(b). Lt. Rivera was the only officer that used profanity during the entire incident.

Lt. Rivera called for back up. PO Duchatellier, PO Nunez and PO Peralta arrived. Lt. Rivera sent PO Duchatellier and PO Peralta to go to § 87(2)(b)'s apartment to verify that she was § 87(2)(b)'s girlfriend. Lt. Rivera and PO Nunez searched the car. PO Nunez went behind the driver's seat. He put his weight on the second row of seats to look in the third row. PO Nunez broke the second row of seats as a result. Lt. Rivera was searching around the passenger's side. He went into the middle console and glove compartment and did not remove anything. PO Nunez opened the sun roof and pulled a plastic piece from the ceiling. § 87(2)(b) and § 87(2)(b) were facing the car and could see the officers. Lt. Rivera and PO Nunez searched for 15 minutes. Lt. Rivera found a small bag of weed, smaller than one and a half inches, on the floor behind the passenger's seat and commented that the weed was the reason that § 87(2)(b) did not want the officers to search his car. § 87(2)(b) and § 87(2)(b) denied having marijuana and believed Lt. Rivera planted the drugs there. § 87(2)(b) and Lt. Rivera continued to argue. Lt. Rivera then said the men were being arrested.

§ 87(2)(b) was released from the precinct and was not charged with a crime. When he received the truck from the precinct, the items in the console and the glove compartment were no longer inside their respective places.

Witness: § 87(2)(b)

- § 87(2)(b) -old, Hispanic female, 5'7" tall, 230 pounds, brown hair and brown eyes. § 87(2)(b)

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on May 6, 2009 (Encl. 15a-g). § 87(2)(b) After carrying bags and luggage to her mother's apartment, § 87(2)(b) went back down stairs. After five minutes, § 87(2)(b) went to look out the front windows that and saw the doors of § 87(2)(b)'s truck open. Four male plainclothes officers were around the truck. § 87(2)(b) went downstairs, spoke to PO Duchantelier and PO Peralta and explained that she was § 87(2)(b)'s girlfriend and showed the plane tickets documenting that they landed at 5:30PM. The officers walked away and instructed § 87(2)(b) to stay on her side of the street. From where she was standing, § 87(2)(b) could see that the doors of § 87(2)(b)'s car were opened. Four to five white male officers, dressed in plainclothes were inside of the car. One officer was near the engine part, two sets of officers were in the front driver's seat, an officer looked in the glove compartment area and other officers were in the back seat area. The officers were lifting up the speakers from the back of the car and § 87(2)(b) later observed that the speakers were damaged as a result.

The officers searched the car for seven to eight minutes. § 87(2)(b) did not see the officers find anything. From her knowledge there was no marijuana in the car. § 87(2)(b) went to the 34th Precinct where she spoke with PO Pichardo. § 87(2)(b) remembered PO Pichardo being at § 87(2)(b) and checking the rear of the truck. § 87(2)(b) received a DVD from the management officer from her building which shows § 87(2)(b) going back and forth to her building. She obtained the video from § 87(2)(b) the superintendent.

Witness: § 87(2)(b)

- § 87(2)(b), Hispanic female, 5'4" tall, 138 pounds, black hair and brown eyes. § 87(2)(b)

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on July 7, 2009 (Encl. 17a-d). When § 87(2)(b) approached § 87(2)(b) § 87(2)(b) was standing outside with her daughter. § 87(2)(b) explained that officers stopped her boyfriend who was in the truck across the street. An unmarked police car was parked behind the truck. § 87(2)(b) did not see § 87(2)(b) standing outside his car or in handcuffs. The trunk and front doors of the truck were opened. Two plainclothes officers were checking the car. The officers were walking around the outside of the car but § 87(2)(b) did not see them go inside of it. Additional officers did not come to the location or search in the car.

NYPD Statement(s):

Subject Officer: LT. FRANKIE RIVERA

- § 87(2)(b) -old, Hispanic male, 5'8" tall, 205 pounds with brown hair and hazel eyes and a scar on the left side of his face.
- Worked a tour of 12:30 PM to 9:15PM with overtime to 11:50PM, Assigned to special operations and working with the 34th Precinct's Anti-Crime team. Partnered with PO

Christopher Labate and PO Andrew Roe, dressed in plainclothes and assigned to an unmarked blue Crown Victoria in which Lt. Rivera was the passenger.

Memo Book:

- 7:00 p.m., two under arrest in front of § 87(2)(b) for § 87(2)(b) - assigned to PO Pichardo from SNEU (Encl. 25a-b).

Lt. Frankie Rivera was interviewed at the CCRB on September 24, 2009 (Encl. 26a-b). On April 15, 2009, at approximately 7:00PM, Lt. Rivera and his partners were driving northbound on § 87(2)(b) towards § 87(2)(b) in Manhattan. Lt. Rivera observed a double-parked SUV in front of § 87(2)(b) facing the southbound direction. The driver of the vehicle, identified as § 87(2)(b) was sitting inside alone. There were no calls received regarding the double parked vehicle and the officers did not have information that led them to believe the occupants were involved in illegal drug activity. Lt. Rivera intended to do an investigation, find out why the occupants were in the area and inform them that they were illegally parked in a bad area. Lt. Rivera did not recall how much time elapsed from when he initially observed the car until when he approached it. Lt. Rivera made a u-turn and was now directly behind the SUV. Simultaneously, § 87(2)(b) entered the front passenger side of the vehicle. Lt. Rivera could not recall if the passenger side door was already opened or closed when § 87(2)(b) approached it and did not remember if he was carrying bags or had anything in his hands. Lt. Rivera did not recognize either male from a previous interaction.

This was the first time that Lt. Rivera saw § 87(2)(b) as he did not see him talking to or interacting with anyone in the area. Once § 87(2)(b) was seated, Lt. Rivera observed him make a motion with his left hand, as if he was throwing something behind § 87(2)(b). This was the first action made by § 87(2)(b) that was suspicious. Lt. Rivera exited his car to approach and conduct an investigation. PO Labate and PO Roe exited at the same time. Lt. Rivera approached on the passenger's side of the car. Either PO Roe or PO Labate approached the driver's side. One of the officers stayed in the rear of the car. As Lt. Rivera approached, § 87(2)(b) exited the vehicle without being asked. § 87(2)(b) called Lt. Rivera a "motherfucker" and commented that he saw Lt. Rivera when he first came around and the officers were only stopping him because he was black. Lt. Rivera instructed § 87(2)(b) to get back in the car and calm down. He did this to gain control because § 87(2)(b) had come out of the car so suddenly. § 87(2)(b) became belligerent and irate. Lt. Rivera never said "shut the fuck up", "mother fucker" get out of the car or what are you "fucking" doing in this area. He asked § 87(2)(b) to step back out of the car for his safety to make sure that whatever was thrown in the back seat was not a weapon.

§ 87(2)(b) and § 87(2)(b) were escorted to the rear of the vehicle. Lt. Rivera inquired about § 87(2)(b)'s reasoning for being in the area. § 87(2)(b) said he just came back from Puerto Rico with his girlfriend. Lt. Rivera asked if his girlfriend lived in the building, what apartment she lived in and for her last name. § 87(2)(b) provided his girlfriend's information. The males were being detained. However, Lt. Rivera was not sure if a frisk was conducted of § 87(2)(b). Lt. Rivera went to the passenger's side of the car to look for any objects behind the driver's seat. He opened the passenger's side door and looked inside. He did not enter the vehicle to do this. He did not see anything so he went to the back driver's side door. As soon as he opened the door, he observed a clear bag of marijuana on the back seat in plain-view. He could not recall the quantity. The area is known for selling a form of marijuana called haze. It is packaged differently by different sellers. Lt. Rivera could not tell if the marijuana was from the area based on the packaging and he never told the passenger that he knew the drugs were from there.

Lt. Rivera was not sure of the kind of interaction the other officers had with § 87(2)(b). He was calm and cooperative and told § 87(2)(b) to calm down. The situation escalated because § 87(2)(b).

§ 87(2)(b) was loud, cursed and became belligerent. Lt. Rivera had to be more assertive and speak louder because § 87(2)(b) was talking loudly. However, Lt. Rivera could not recall if he did or did not use profanity. Lt. Rivera was concerned but not upset because the situation was escalating. Lt. Rivera did not hear PO Labate say, “Shut the fuck up” or “chill the fuck out”. Both men were then placed under arrest and the car was searched by Lt. Rivera. He called for another vehicle to transport both males back to the stationhouse. Two cars came. One was a marked patrol car occupied by PO Monzon and PO Gomez. The other car was an Anti-Crime team, which contained PO Fabio Nunez.

Lt. Rivera instructed officers to follow up with § 87(2)(b)'s story about his girlfriend living in one of the buildings. § 87(2)(b)'s girlfriend came downstairs sometime during the interaction and talked to PO Monzon. A cursory search was done of the car at the location. PO Nunez did not have any metal objects or equipment with him. Lt. Rivera was not sure who searched the car besides himself while at the scene but he believed someone else assisted. A photograph from April 15, 2009, of § 87(2)(b)'s car from was shown. Two males were searching the car. Lt. Rivera said one of the officers looked like him but he was not sure.

The cabin of the car was searched. Lt. Rivera could not recall if the glove compartment or middle console was searched. However, he stated that those areas could be searched since narcotics were found in the car. Because a crowd gathered, they took the car and the males to the stationhouse. Lt. Rivera could not recall if he entered the car while the driver was inside. However, he stated that it was not likely. § 87(2)(b) was searched but Lt. Rivera did not recall by whom. He could not recall who drove the car back to the precinct.

Lt. Rivera was not sure if the interior of the car was damaged. § 87(2)(b) was placed under arrest for § 87(2)(a) 160.50 although Lt. Rivera observed § 87(2)(b) throw the marijuana in the back seat. The interaction was 5-10 minutes. At the stationhouse, PO Pichardo was assigned the arrest. Lt. Rivera immediately resumed patrol. After a subsequent investigation was done at the precinct stationhouse, § 87(2)(b)'s arrest was voided. A copy of the criminal court complaint was shown to Lt. Rivera. It indicated that PO Edwin Pichardo was told by Lt. Rivera that he observed § 87(2)(b) holding one clear plastic bag of marijuana in his hand in public view. § 87(2)(b) then threw said bag on the floor of the back seat area of the vehicle. Lt. Rivera. It was reiterated that Lt. Rivera said he could not see what was in § 87(2)(b)'s hand. Lt. Rivera said he did not remember if he saw something, but anything was possible because the incident occurred in April 2009 and Lt. Rivera was providing his CCRB testimony in September 2009. A copy of the arrest report for § 87(2)(b) was shown. It indicated that § 87(2)(b) was observed in a hand to hand transaction with an unapprehended dealer. Lt. Rivera said he did not know anything about that and did not see the hand to hand transaction. He acknowledged that the information on the arrest report was based on what he told PO Pichardo that he observed.

Subject Officer: PO CHRISTOPHER LABATE

- § 87(2)(b) -old, white male, 6'0" tall, 200 pounds, brown hair and brown eyes.
- PO Labate worked a tour of 5:30 p.m. to 2:05 a.m. the following day. He was assigned to the 34th Precinct Anti-Crime team with PO Roe and Lt. Rivera. The officers were dressed in plainclothes and assigned to an unmarked dark colored vehicle.

Memo Book

PO Labate did not have his memo book because it was lost during a shooting incident. He filed a UF61 for the lost memo book.

PO Christopher Labate was interviewed at the CCRB on September 3, 2009 (Encl. 27a-b).

§ 87(2)(g)

§ 87(2)(g) The officers stopped a Ford Explorer or an Expedition in the middle of § 87(2)(b) PO Labate could not recall the reason why they stopped the vehicle or who made an observation about the vehicle. Two males were inside of the vehicle. PO Labate was towards the rear of the car. Lt. Rivera took § 87(2)(b) out of the car and escorted him to the rear. This was the first time that PO Labate saw either of the males on that date as they were not the subject of an investigation. PO Labate could not recall if anyone walked up to the vehicle or if a hand-to-hand transaction was observed prior to approaching the vehicle. PO Labate stayed with § 87(2)(b) in the rear and did not know where PO Roe was.

While § 87(2)(b) was in the rear of the car he continued to yell. The car windows were tinted so PO Labate could not see inside of the car. PO Labate told § 87(2)(b) to calm down because the situation was not serious. Lt. Rivera was calm. PO Labate did not use any profanity and he did not hear Lt. Rivera use any profanity.

Lt. Rivera searched the vehicle and found drugs inside of the middle console between the driver's and passenger's seat. PO Labate was not sure if PO Roe assisted with the search. PO Labate was alone in the back of the car with § 87(2)(b) PO Labate could not recall if the second male that was in the vehicle was asked to get out. He assumed that the male was since the car was searched. After two minutes being in the back of the vehicle, Lt. Rivera instructed PO Roe to handcuff § 87(2)(b) PO Labate was not sure if other members of the field team came to the location. He did not see anyone carrying a metal object or using an object to open compartments with § 87(2)(b)'s car. § 87(2)(b)'s girlfriend came outside and stood across the street from the officers. PO Labate frisked and searched § 87(2)(b) after he was handcuffed and not before. PO Roe drove § 87(2)(b)'s car back to the precinct. He did not notice any damage to the car.

Witness Officer: PO ANDREW ROE

- § 87(2)(b) -old white male, 6'0" tall, 215 pounds, blonde hair and hazel eyes.
- Tour of 3:00 pm. to 11:35 p.m., assigned Anti-Crime team, partnered with Lt. Frankie Rivera and PO Christopher Labate, dressed in plainclothes and assigned to an unmarked blue Crown Victoria. PO Roe was the operator and Lt. Rivera was the front seat passenger.

Memo Book

PO Roe did not have his any memo book entries pertaining to the incident (Encl 28a-b).

CCRB Testimony

Police Officer Andrew Roe was interviewed at the CCRB on September 9, 2009 (Encl. 29a-b). § 87(2)(g)

As § 87(2)(b) approached vehicle, the officers drove up behind the vehicle to conduct a car stop. They wanted to find out why the men were double parked and in the area. As the officers approached, § 87(2)(b) raised his voice at them. PO Roe interacted with § 87(2)(b) asking him for his license and registration. He took § 87(2)(b)'s paperwork and checked to make sure that it was valid. PO Roe did not go back to his car because he did not have a computer inside. PO Roe asked § 87(2)(b) why he was double-parked. He explained that he was visiting some family. PO Roe did not remember if § 87(2)(b) said that he came from the airport.

At some point, PO Roe was in the back of the vehicle with § 87(2)(b) and § 87(2)(b) PO Roe did not know if Lt. Rivera or PO Labate searched the vehicle and he couldn't see what they were doing. PO Roe could not recall if PO Nunez, PO Duchatelier and PO Peralta came to the location. PO Roe did not hear Lt. Rivera or PO Labate tell § 87(2)(b) to "Shut the fuck up" or use the word "motherfucker". PO Roe did not see anyone with metal objects or a crow bar in their hands. He did not see any damage to § 87(2)(b)'s car. PO Roe was advised that § 87(2)(b) was

under arrest for marijuana. PO Roe did not know any more details of the arrest or which officer recovered the drugs. PO Roe was not sure if § 87(2)(b) or § 87(2)(b) was frisked or searched. § 87(2)(b) was handcuffed and taken to the precinct. § 87(2)(b) kept the car and was released at the scene. The officers did not take the car to the precinct. The arrest report indicated that § 87(2)(b) was observed buying drugs. PO Roe could not recall if he observed this.

Witness Officer: PO FABIO NUNEZ

- § 87(2)(b) -old, Hispanic male, 5'11" tall, 220 pounds, black hair and brown eyes.
- Worked a tour of 3:00PM to 11:35PM with the 34th Precinct Anti-Crime team. Partnered with Lt. Frankie Rivera, PO Duchatelier and PO Peralta. Dressed in plainclothes and assigned to unmarked blue Crown Victoria.

Memo Book

PO Nunez did not have any entries regarding the incident (Encl. 30a-b).

CCRB Testimony

Police Officer Fabio Nunez was interviewed at the CCRB on October 2, 2009 (Encl 31a-b). PO Nunez did not recall the incident. PO Nunez believed he was the driver for Lt. Rivera for the day. He did not recall working with PO Roe or PO Labate. PO Nunez did not recall a car stop on § 87(2)(b) and did not recognize photographs of § 87(2)(b). PO Nunez had no recollection of bringing any metal objects to the location or of a vehicle search on. A photograph from the date of the incident was shown. PO Nunez believed that he was the male in the photo on the right side. However, he did not remember what he did to the vehicle or the circumstances surrounding the stop of the vehicle.

Witness Officer: PO ELVIN PICHARDO

- § 87(2)(b) -old, Hispanic male, 5'9" tall, 230 pounds, black hair and brown eyes.
- Tour of 7:00 a.m. to 3:40 p.m., with over time to 1:40 a.m. Assigned to SNEU, partnered with PO Rosario, dressed in plainclothes and working on foot.

Memo Book

7:00 p.m., two under arrest (Encl. 23a-c)

CCRB Testimony

PO Edwin Pichardo as interviewed at the CCRB on July 2, 2009 (Encl. 24a-b). PO Pichardo was inside of the 34th Precinct stationhouse processing an earlier arrest when Lt. Rivera assigned him the arrests of § 87(2)(b) and § 87(2)(b). § 87(2)(b)'s arrest was voided because he did not have marijuana and had no warrant. PO Pichardo was never at § 87(2)(b) and was not involved in the arrest of § 87(2)(b) and § 87(2)(b). Lt. Rivera told PO Pichardo that he stopped § 87(2)(b) after he observed him buy marijuana. § 87(2)(b) then threw a bag of marijuana in the back seat of his Ford Explorer. § 87(2)(b)'s car was taken to the precinct because the officers did not want to leave it at the scene. PO Pichardo did not have any additional information about what occurred at the incident location. The details about the complaint were received from Lt. Rivera. PO Pichardo was the affiant for the criminal court complaint indicating that § 87(2)(b) was found in possession of marijuana in plain view. § 87(2)(b)'s girlfriend came to the precinct and PO Pichardo explained § 87(2)(b)'s arrest and provided his shield number when

asked. PO Pichardo released his car to his friend. PO Pichardo drove the car from the parking lot to the front of the precinct and did not notice any damage.

NYPD Document(s)

- The tour 3 roll call indicates that Lt. Rivera worked a tour of 12:30 a.m. to 9:15 p.m. (Encl. 32a-j). PO Roe, PO Labate, PO Nunez, PO Peralta and PO Duchatelier were assigned to Anti-Crime working a tour of 5:30 p.m. to 2:05 a.m. Tour 2 Roll Call from the 34th Precinct indicates that PO Edwin Pichardo was assigned to SNEU Ops with PO Rosario, working a tour of 7:00 a.m. to 3:40 p.m.
- The 34th Precinct Command Log has § 87(2)(b) and § 87(2)(b)'s arrests logged in at 7:10 p.m., with a note that § 87(2)(b)'s arrest was voided (Encl. 33).
- The arrest report for § 87(2)(b) indicates that he was observed exchanging US currency for marijuana by an unapprehended dealer (Encl. 19a-b).
- Property voucher § 87(2)(b) for § 87(2)(b) included one bag of marijuana recovered by LT Rivera (Encl. 20)
- The Criminal Court Complaint states that Lt. Rivera saw § 87(2)(b) holding one clear plastic bag of marijuana, enter the passenger side of car and then throw the item on the floor of the back seat (Encl. 22). Lt. Rivera recovered the marijuana from where he saw it thrown.
- The New York State Police has no record of a license or license plate check for § 87(2)(b) or § 87(2)(b) (Encl. 34).

Summons/Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Status of Civil Proceedings

- § 87(2)(b) filed a Notice of Claim with the City of New York on § 87(2)(b), claiming that he was falsely arrested and has interior damage to his 2008 Ford Explorer. The monetary amount he is seeking is not indicated (Encl. 13a-c). As of § 87(2)(b) a 50h Hearing was conducted.

Civilians Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Civilians CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) and § 87(2)(b) (Encl. 7-8).
- § 87(2)(b)
[REDACTED]
[REDACTED]

Subject Officers CCRB History

- Lt. Rivera has been a member of the service for fifteen years and there are two substantiated CCRB allegations for a frisk and a search of a person against him in case # 200717886. Charges were recommended. The NYPD declined to prosecute. (Encl. 4a-b).
- PO Labate has been a member of service for five years and has no substantiated allegations against him. (Encl. 5)
- PO Nunez has been a member of the service for nine years and there is one substantiated CCRB allegation against him for a vehicle search in case # 200504839. Charges were recommended. The NYPD gave PO Nunez instructions (Encl. 6).

Conclusion

Identification of Subject Officers

Lt. Rivera confirmed his involvement in the incident. He also matched the physical description of the officer that § 87(2)(b) alleged to have used profanity and conducted a vehicle search. § 87(2)(b) provided a physical description that matched PO Labate and indicated that he used profanity towards him and searched him. § 87(2)(b) also provided a physical description that matched PO Nunez and alleged that this officer damaged his vehicle while conducting a search.

Investigative Findings and Recommendations

Allegation A - Discourtesy: Lt. Frankie Rivera spoke obscenely and/or rudely to § 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) Lt. Rivera denied ever using profanity. PO Roe and PO Labate corroborate Lt. Rivera's statement. § 87(2)(b) corroborated § 87(2)(b)'s statement and recalled Lt. Rivera using the words "motherfucker" several times. § 87(2)(g)

Allegation B - Abuse of Authority: Lt. Frankie Rivera searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that Lt. Rivera searched § 87(2)(b)'s vehicle. Lt. Rivera intended to approach the driver of the vehicle because he was double parked. Before Lt. Rivera approached the car, § 87(2)(b) entered the passenger's seat of the vehicle and made a hand movement to the back of the driver's seat as if he was throwing something. Lt. Rivera stated in his CCRB interview that he did not see anything in § 87(2)(b)'s hands at the time but the action raised his suspicions that a weapon or drugs may possibly be in the car. After removing both occupants of the car, Lt. Rivera searched the front of the car where § 87(2)(b) was seated first and its compartments. A photograph taken by § 87(2)(b) showed two officers searching the front of § 87(2)(b)'s truck as § 87(2)(b) stood in the back. Lt. Rivera did not go to the area where the alleged furtive movement was made until after he searched the entire front of the car.

In *People vs. Miller*, the courts found that "behavior which is susceptible of innocent as well as guilty interpretation cannot constitute probable cause and innocuous behavior alone will not generate a founded or reasonable suspicion that a crime is at hand (Encl. 2a-d)." Additionally, according to *People vs. Carvey* in regard to a search of an automobile, the courts found that "the

facts known to the officer must create an actual and specific danger to the officer's safety. In order for there to be an actual specific danger there must be a substantial likelihood of a weapon in the car (Encl. 3a-e)."

§ 87(2)(g)

§ 87(2)(g)

Specifically, PO Labate said that the windows were tinted and he could not see inside of § 87(2)(b)'s car from where the officers were seated. The picture of § 87(2)(b)'s car taken on the date of the incident by § 87(2)(b) show that the rear windows of the vehicle were tinted. § 87(2)(g)

In his CCRB interview, Lt. Rivera described the actions he observed as simply § 87(2)(b) entering the passenger seat and then making a movement that looked like he threw something in the back seat. He was shown the arrest report which states that § 87(2)(b) was observed exchanging US Currency for marijuana by an unapprehended dealer. He acknowledged that he supplied the information for the report but did not see the actions described. Additionally, he was shown the Criminal Court Complaint which stated that Lt. Rivera observed § 87(2)(b) holding a clear plastic bag of marijuana in a public place, enter the passenger side of a vehicle and throw said bag of marijuana onto the floor of the back seat. Again Lt. Rivera was clear in his CCRB interview that he only observed a hand gesture and could not explain the discrepancy between the criminal court complaint and his CCRB testimony.

§ 87(2)(g)

Allegation C - Abuse of Authority: PO Christopher Labate searched § 87(2)(b)

§ 87(2)(b) alleged that PO Labate searched him soon after he exited his vehicle and before the officers made the decision to place him under arrest. PO Labate denies this and alleged that he searched § 87(2)(b) after Lt. Rivera told him that § 87(2)(b) was under arrest. PO Roe was not sure if § 87(2)(b) was searched or not. Lt. Rivera did not see the search being conducted. § 87(2)(g)

Allegation D - Discourtesy: PO Christopher Labate spoke obscenely and/or rudely to § 87(2)(b)

§ 87(2)(b) alleged that PO Labate told him to "shut the fuck up" while in the presence of PO Roe. PO Labate denies making the statement and PO Roe corroborates PO Labate's statement. § 87(2)(g)

§ 87(2)(g)

Allegation E - Abuse of Authority: PO Fabio Nunez damaged § 87(2)(b)'s property.

§ 87(2)(b) and § 87(2)(b) alleged that PO Nunez used a metal object to damage the interior of his vehicle. PO Nunez did not recall being at the scene and denied damaging the car. Lt. Rivera, PO Pichardo, and PO Labate were all in § 87(2)(b)'s car at some point after the alleged damage was done and denied that there was any damage. § 87(2)(g)

§ 87(4-b) § 87(2)(g)

Allegation G – Other Misconduct: Lt. Frankie Rivera supplied false information which formed the basis of the arrest paperwork for § 87(2)(b)

The criminal court complaint, which was filed by PO Pichardo, clearly states that Lt. Rivera's observations were the basis of the arrest (enc. 22). The criminal court complaint states, "§ 87(2)(a) 160.50

"§ 87(2)(a) 160.50" The arrest report (enc. 19a) states, "§ 87(2)(a) 160.50

In his CCRB interview, Lt. Rivera described the actions he observed as simply § 87(2)(b) entering the passenger seat and then making a movement that looked like he threw something in the back seat. He was shown the arrest report and he acknowledged that he supplied the information for the report but did not see the actions described. Additionally, he was shown the Criminal Court Complaint which stated that Lt. Rivera observed § 87(2)(b) holding a clear plastic bag of marijuana in a public place, enter the passenger side of a vehicle and throw said bag of marijuana onto the floor of the back seat. Again Lt. Rivera was clear in his CCRB interview that he only observed a hand gesture and could not explain the discrepancy between the criminal court complaint and his CCRB testimony. § 87(2)(g)

Team: 2

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Investigator:	_____	<u>Nina S. Mickens</u>	_____
	Signature	Print	Date
Supervisor:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date